IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Company Petition No. 03 of 2006

In the Matter of Companies Act, 1956
And
In the matter of M/s Maharishi Steels Pvt. Ltd.
And
In the matter of
U.P. Finance Corporation & others
And
M/s Maharishi Steels Pvt. Ltd.
Having its registered office at
E-51,52,53, 57 and 58
Jasodharpur Industrial Area
Kotdwar, Pauri Garhwal
Uttaranchal through its
Director Sri Bheem Singh .....Petitioner

Vs

1. U.P. Finance Corporation Regional Office
   through Regional Manager
   76, Rajpur Road, Dehradun
2. Uttaranchal Power Corporation Ltd.
   through Executive Engineer
   Electricity Distribution Division Kotdwar
   Pauri Garhwal, Uttaranchal
3. Deputy Commissioner of Income-Tax
   Room No. 09 Aaykar Bhawan
   Meerut Road, Muzaffarnagar, U.P.
4. Central Excise Range - Kotdwar
   Through Superintendent Central Excise
   Range – Kotdwar Sector – I, BHEL
   Haridwar (Uttaranchal)
5. Uttaranchal Trade Tax Department
   Through Assistant Commissioner
   Trade Tax, Haridwar
   District Pauri Garhwal
6. M/s Tanya Enterprises, Head Office
   At Arora Market, Vehalna Chowk
   Meerut Road, Muzaffarnagar through
   Its Proprietor Shri Shashank Jain
7. M/s Jai Mateshwari Steels Pvt. Ltd.
   Industrial Area, Jasodharpur, Kotdwar
   Pauri Garhwal through Sri Anurag Goel ..Respondents

Sri R.P. Singh, learned counsel for the petitioners
Sri Naresh Pant, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This petition is moved by M/s Maharishi Steels Pvt. Ltd. (hereinafter referred as petitioner company) under Sections 433 (a), (e) and (f) of the Companies Act, 1956 with a prayer that the company be moved up under the directions of this Court.

The company was engaged in manufacturing of M.S. Ingots by induction furnace in its unit situated at Jashodarpur Industrial Area, Kotdwar, District Pauri Garhwal. Bhim Singh Group of Directors run the unit of the Company upto 31.03.1998 and during that financial year the company suffered heavy loss and for paying off its dues to U.P. State Electricity Board and other financial institution, the unit of the company was leased out to Sri Sharat Goyal & others who operated the unit upto 20.08.1998 and thereafter due to loss they left the unit and Sri Rakesh Kumar was inducted as a Director of the company and by that time the electricity connection was disconnected due to non payment of dues.

Thereafter, a fresh agreement was executed between U.P. State Electricity Board and the company for supply of the electricity but the company could not function well and suffered heavy loss. In the month of March 2003 the company was closed due to financial loss and difficulties.

The respondent No. 2 disconnected the power supply to the company and issued illegal and exorbitant recovery citation for Rs. 6,42,19,263/- against the Directors of the company and therefore Civil (Misc.) Writ Petition No. 910 (M/B) 2003 was filed before this Court. The company borrowed Rs. 87,42,000/- from the respondent No. 1 – U.P. Finance Corporation and O.T.S. for Rs. 1,15,00,000/- were

settled as due against the company with the respondent No. 1. Now, the respondent No. 1 is threatening the Directors of the company to issue personal recovery certificate against them for payment of exorbitant amount of Rs. 1,33,88,273.94 although the company has paid about Rs. 50 lacs after the settlement of the OTS.

The respondent No. 3 – Deputy Commissioner of Income Tax also issued notice under Section 179(1) of the Income Tax Act, 1961 and claimed exorbitant amount of Rs. 32.85 lacs.

The respondent No. 4 – Central Excise Range, Kotdwar also claimed outstanding dues and threatened that action will be initiated against the Directors of the company for recovery of dues under Central Excise Law.

The respondent No. 6 – M/s Tanya Enterprises also demanded payment of outstanding amount of Rs. 1,95,081/- from the Directors of the company through the letter dated 03.05.2003 and also filed Company Petition No. 13 of 2003 for winding the company in this Court. Therefore the Company filed petition for wounding up of the company.

The respondent U.P. Financial Corporation has filed short counter affidavit and alleged that the petitioner has no authority to file the present company petition through its Director Bhim Singh. The petitioner has not annexed the resolution of the Board of Directors as required U/S 291 of the Companies Act. It was also alleged that the petitioner before filing the petition has not obtained the permission for drawing winding up proceedings of the Company as required U/S 32 of the State Financial Corporation Act. It is also alleged that when the petitioner failed to comply with the

terms and conditions of the agreement executed between the secured creditor/U.P.S.F.C. Ltd. and him the Corporation took physical possession of the petitioner's unit and thereafter sold the mortgaged assets of the company by registered sale deed dated 19-3-2004 to respondent No.6 U/S 29 of the State Financial Corporation Act. It is also alleged by the Corporation that it has sold the property which was mortgaged/hypothecated in its favour after notices and observance of complete procedure as required U/S 29 of the State Financial Corporation Act was complied with and the sale of the property was confirmed in favour of the purchaser-respondent No.6. The assets of the guarantor is a private property which cannot be identified with the property of the company and therefore it can be said that in order to protect themselves from the further recovery proceedings in respect of the balance dues of U.P.F.C. the guarantors have filed the instant Company Petition which is misconceived. The liabilities of the guarantor are co-extensive U/S 128 of the Contract Act and the UPFC has each and every right to recover the balance amount from the personal assets of the guarantors.

Heard Sri R.P. Singh, learned counsel for the petitioners, Sri Naresh Pant, learned counsel for the respondents and perused the record.

Perusal of the petition shows that the petitioner has filed the present company petition for winding up the company in order to pay-off the dues of the respondents. Alongwith the petition the resolution of Board of Directors as required U/S 291 of the Companies Act, has not been annexed. Permission for drawing winding up proceedings of the Company, as required U/S 32 of the State Financial Corporation Act, has also not been brought on record. The petitioner has apprehension that the respondents may recover the dues

from the assets of Board of Directors/guarantors. The assets of the guarantors as private property cannot be identified with the property of the company and therefore it can be said that in order to protect themselves from further recovery proceedings in respect of the balance dues of the respondents the guarantors have filed the instant company petition which cannot be said just and equitable ground for winding up of the company.

For the aforesaid reasons the company petition is not maintainable for initiating proceedings for winding up of the company and is liable to be dismissed.

Accordingly the company petition is dismissed in limine.

(B.C. Kandpal, J.)

28.09.2006
ASWAL